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Palmer High School vs. Gay-Straight Alliance; Does D11 Have a Case?

By Peter Rice

Several members of the Palmer High School Gay-Straight Alliance, aided by the ACLU, are suing their school for refusing to recognize the group. Palmer Principal Karin Reynolds and District 11 are blocking the organization because they say it does not directly link up with the curriculum.

But the lawsuit alleges that many of Palmer's other student groups – such as the chess club, the Frisbee club, and the sci-fi club – don't link up with the curriculum either. Since Palmer lets these clubs exist, the ACLU attorneys argue, they also have to allow the GSA under the Equal Access Act (EAA) – a federal law passed in 1984 with support from Christian organizations that wanted to make sure religious student groups could form in the public schools.

Recognized groups have easier access to meeting places on school property, and are allowed to advertise in the schools, in official school publications, and over the school's public address system.

The students who are taking their school to court aren't talking to the press, and mum's the word at District 11 as well.

"We don't have an opinion," said D11 representative Elaine Naleski. "We are working with our lawyers to see how the district will respond."

A Growing Trend

This is not the first time a school has refused to recognize a GSA.

"There's probably been thirty separate incidents in the

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History proves loud and clear — Moment of silence safeguards religious freedom better than prayer

By Ken Burrows

In recent years, the Colorado Springs City Council briefly grappled with the appropriateness of opening its meetings with a prayer, after it was suggested a moment of silence might be a better option. A proposal is now in the offing to open District 11 School Board meetings with a prayer, in place of the moment of silence currently observed. Where does this type of public prayer stand vis-à-vis American history? Just as importantly, what are its impacts on religious liberty?

It is well documented that our founders regularly struggled, often heatedly, with the issue of how much to entangle government and religion. Indeed, it was one of the core issues in framing colonial law and, ultimately, the Constitution. It is no accident that the Constitution does not mention "God."

As historians have pointed out, Thomas Jefferson and James Madison, key architects of the Constitution, had ample opportunity (and encouragement) to include such references. Yet they chose not to, even though they were themselves believers in a god. Their reason is summed up well in Madison's own words, when he was discussing governmental religious proclamations. He said the problems with such proclamations were that they tended to "imply a religious agency"; and the practice "naturally terminates in a conformity to the creed of the majority." Because of such possible religious favoritism, Madison even opposed paying Congressional chaplains, terming it inconsistent with religious freedom and with the Constitution.

Yet the controversy over such public prayer has persisted. In a 1983 Supreme Court decision upholding the Nebraska legislature's opening each day with a

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Academic freedom under fire; liberal bias alleged

By Jake Tabor

Thursday, December 18, a bipartisan committee met under State Senate President John Andrews, R-Centennial, to hear allegations of discrimination against conservative students in the state's public universities and colleges.

In what Chris Frates of the *Denver Post* called "the latest development in Andrews' plan to encourage or require state schools to hire more conservative faculty," around 20 students told lawmakers of the alleged discrimination they had witnessed or experienced due to their conservative political tendencies.

One month prior, Andrews asked the presidents of the state's colleges to send him explanations of their policies regarding discrimination based upon political or religious beliefs. Andrews has largely been pleased with the written policies he has received but called for the hearing to see if school policies were being put into practice.

As Jim Spencer pointed out in his Denver Post column, virtually all of the complaining witnesses at the hearing were coordinated by The Campus Accountability Project of the Independence Institute, "the conservative think tank that propelled Andrews into public office."

Committees usually make an effort to hear both parties in a controversy, but in this case, the hearing was seeking conservative students. Even so, many of the students testified that, in general, professors are fair and do not push their political views onto the students. Of those who claimed to have been hurt by political bias, many did not use their college's system for filing complaints, and of those who did, many were helped.

State Senate President John Andrews, R-Centennial.

The broader issue behind the hearing is the question of the so-called Academic Bill of Rights. The document – written by David Horowitz, a conservative California activist – is meant to ensure the safety of students from professors' political biases.

Though few would disagree that students should not be punished for their political opinions, it is not clear that there is a problem warranting legislation aimed at achieving the goals of the Academic Bill of Rights. Furthermore, some fear that the type of legislation Andrews wants would be used as a tool to make campuses more conservative ideologically, rather than to protect students from discrimination.

Members of the University of Northern Colorado Chapter of the American Association of University Professors, Caldwell, Egerton, and Rothaus condemned the idea of hiring based on political agendas. They wrote to the *Denver Post*, "The would-be reformers have argued for 'intellectual diversity' in the humanities and social sciences. In point of fact, they are creating a political litmus test for academic hires. Paradoxically, such a test would undermine the first tenet of the Academic Bill of Rights itself, that 'no faculty member shall be hired or fired on the basis of their political beliefs.'"

Legislation creating an Academic Bill of Rights is expected to be introduced in late January.

EDITORS NOTE: Citizens Project supports expression of diverse points of view, freedom of speech, and freedom from discrimination in public schools–primary, secondary, and institutes of higher education. If Republican and conservative students have experienced discrimination at state colleges and universities, we do condemn these incidents and expect that those professors be properly disciplined. However, we have concerns that Mr. Horowitz, Senator Andrews, and the Independence Institute are looking for ways to squelch the expression of liberal viewpoints on campuses and create political litmus tests for hiring faculty rather than mending any legitimate grievances of students.

D11

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last three years," said Tasha Hill, executive director of Inside Out Youth Center, a local support group for those who are gay, lesbian, bisexual, and transgendered.

Currently, there are four GSAs in the area, and none of them was recognized without some controversy. According to Hill, Palmer's tactic for keeping the GSA out is not uncommon.

"Very few of them come right out and say 'We don't let gay clubs meet here.' They say it's not relevant to the curriculum."

Two year ago, when Morgan Weinert tried to have a GSA at Monument's Lewis-Palmer High School recognized, the school told her to work through the already established Diversity Club instead. Eventually, Weinert contacted the ACLU, which sent a letter threatening to take the issue to court. After that, Lewis-Palmer reconsidered and recognized the GSA.

Weinert suspects that the school was wary of a public relations backlash, but didn't really mind the idea of a GSA and weren't about to start a protracted legal battle over it.

"They have a lot more parents to worry about than we do. … We were lucky that the key people happened to be okay with it."

So why did Lewis-Palmer in Monument let the group in without much of a fight while Palmer in Colorado Springs huddles with its team of lawyers?

"My guess is that the administration morally doesn't believe in this club or they're having a backlash from parents," said Weinert. "I don't think legally they have a leg to stand on."

The Law

The Federal Equal Access Act essentially comes down to this: a school can regulate student groups that are directly tied to academics (curricular groups) however they want. But if the school allows non-academic groups to exist, then their hands are tied.

"If [schools] choose to have non-curricular groups, then they cannot discriminate on the basis of the speech of those groups," said Jordan Lorence, a constitutional attorney with the Alliance Defense Fund, a conservative Christian legal organization in Arizona.

D11 could try to argue in court that all of its other student groups, even the chess and Frisbee clubs, directly relate to the curriculum, but legal precedent would not be on their side.

In one 1990 Supreme Court case, a school district argued that a chess club was curricular because it "supplement[s] math and science courses [by enhancing] students' ability to engage in critical thought processes." The court rejected the argument, commenting that "although math teachers at Westside have encouraged their students to play chess, [it] is not taught in any regularly offered course at the school, and participation in the chess club is not required for any class and does not result in extra credit for any class."

If D11 determines it wants to keep the GSA out of Palmer at all costs, it could choose to forgo federal funding, which would exempt it from the Equal Access Act, or it could shut down all other non-curricular student groups, following the lead of one Salt Lake City school district. Neither of these seems an attractive option for the district.

If D11 determines it wants to keep the GSA out of Palmer at all costs, it could choose to forgo federal funding, which would exempt it from the Equal Access Act, or it could shut down all other non-curricular student groups.

Attorney Jordan Lorence, who is critical of GSAs but pessimistic about the prospects of keeping them out, suggests school districts could minimize GSAs' impact by getting parents more involved.

"I think one solution would be for all of the student groups to require parental consent to participate in them."

Principle

Beyond the legal battle, though, is a controversy encompassing dearly held beliefs. Some conservative Christians view GSAs as a bad influence, spreading misinformation to impressionable youth.

"I think children are confused sexually at that age and I think the GSAs contribute to that confusion and don't help to clear it up," said Lorence. He accused the groups of suppressing information about organizations that try to help gay people become straight.

But those involved in GSA see them as essential support groups – a helping hand for teenagers who are routinely harassed, called names, and threatened with physical violence.

Morgan Weinert says that after she was called a "dyke" in school, "That's when I decided something needed to be done. It hurt me. I can only imagine how it would hurt a freshman boy who was still in the closet."

Citizens Project

Community Voices

Vouchers — a model of inequality?

By Delia Armstrong-Busby

The Colorado Voucher Law opens the door to violating our nation's constitutional separation of church and state. How? The voucher law allows public dollars to go to the funding of religious schools. Since religious institutions are not excluded, they are eligible for public money.

If this is the case, then the matter of inclusion or exclusion based on religious preference becomes ascendant. Is a child of Jewish religious background accepted in a Catholic school? If this is not the case, should the public's dollars be channeled in this fashion?

Milwaukee is often used as a model for voucher programs. With this in mind review the Yeshiva Elementary School, serving 165 students. The school has an operating budget of $1,033,436. There are sixty-seven students who are identified as Choice students. Milwaukee Public Schools are predominantly African American, but the sixty-seven Choice enrollees do not include any children of color. Does this statistical anomaly have to do with religious convictions or some other variable? Another Milwaukee Choice school is Our Lady Queen of Peace Parish, with a Choice enrollment of 50; of those enrollees forty percent are Hispanic and sixty percent are white. Again, numbers contrary to city demographics.

Why do these skews exist if there is no religious exclusion in these schools?

Vouchers diminish civic participation and accountability. Again, the oldest voucher program in the US is located in Milwaukee. Using the data available, accountability is a big issue. A letter written to the Wisconsin state auditor by the then state superintendent John T. Benson outlined concerns about the Milwaukee Voucher Program's lack of accountability. The following is an excerpt of Benson's concerns.

The first and most important policy level question we believe needs legislative attention relates to whether and how the Choice schools should be required to collect and report student achievement data that can be used to document whether the program has had a positive effect on student achievement. The MPCP [Milwaukee Parental Choice Program] *program has been in existence for ten years. ... We believe there is a compelling public interest in evaluating the educational outcomes of the program and reporting those outcomes to the legislature and the parents who are considering the effectiveness of MPS* [Milwaukee Public Schools] *and Choice.*

In summary, the lack of information supporting the academic achievements of Choice students disempowers the public.

The Colorado model does not provide equal opportunity for all children. For instance, what is the caliber of educational achievement of the typical institution open to the voucher student? Many of the best schools, in terms of long-term documentable student achievement, did not seek inclusion in the voucher program. Another concern is that there are so many start-up or mom-and-pop educational efforts – lacking any track record – saying that what they offer is a better educational choice for students. Somehow, in this environment, "different" is being defined as "better" with no substantive supporting evidence. There is much rhetoric and little beef.

Special-needs students are particular victims of inequity under the voucher system. Exclusion of these special students is a choice that voucher schools can enforce. There is an extra cost involved in serving these children; voucher institutions can exempt themselves from accepting these students as clients.

Finally, the test of educational reform is its longevity and its outcomes over time. In the relatively short expression of this current educational voucher movement, time has not really demonstrated the movement's ability to create glacial change in the arena of public education. This statement is based on the disputed educational outcomes in the movement's birthplace, Milwaukee Public Schools. The critical mass of public support for this reform is still absent and maybe that will not change.

Delia Armstrong Busby is an educational consultant specializing in attendance and achievement. She has consulted with school districts throughout the U.S. A former Milken Educator and Danforth Fellow, she is the recipient of the Gates Fellowship for Senior Executives in Leadership and a Harvard Public Service Fellowship to the Kennedy School of Government. She serves as the interim chair of the local Alliance for Quality Public Schools.

Prayer

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prayer (*Marsh v. Chambers*), Chief Justice Warren Burger said such public prayer had "become part of the fabric of our society." Burger went on to say that invoking such "Divine guidance" on public bodies "is simply a tolerable acknowledgment of beliefs widely held among the people of this country." The court majority did, however, include the limitation that such prayer cannot proselytize or advance one religion over another and cannot disparage any other faith. In his dissenting opinion, Justice William Brennan argued that "prayer is serious business" and not an innocuous acknowledgment of widely held beliefs. He noted that, in fact, "some might find any petitionary prayer improper."

What have been the results of trying to walk this fine line between religion and government? A few examples:

In Chesterfield County, VA, a 30-year member of a Unitarian church sought to be included on a list of religious leaders invited to give invocations at county board meetings. She forthrightly stated she would like to offer an invocation from the Wiccan faith. She was told policy allowed only for invocations "consistent with the Judeo-Christian tradition." A federal court subsequently ruled that such limitations on invocations "cannot survive constitutional scrutiny."

As historians have pointed out, Thomas Jefferson and James Madison, key architects of the Constitution, had ample opportunity (and encouragement) to include such references [to God]. Yet they chose not to, even though they were themselves believers in a god.

This past summer a U.S. District judge ordered the Great Falls, SC, town council to cease referring to Jesus Christ or other deities associated with specific faiths in its pre-meeting prayers. When a Great Falls citizen had objected to such specific sectarian references and proposed that members of different religions be invited to give the prayers, the citizen was told by Great Falls Mayor H. C. Starnes that "This is the way we've always done things and we're not going to change."

Rep. Scott Hochberg has sent a letter to the speaker of the Texas House of Representatives, noting that the

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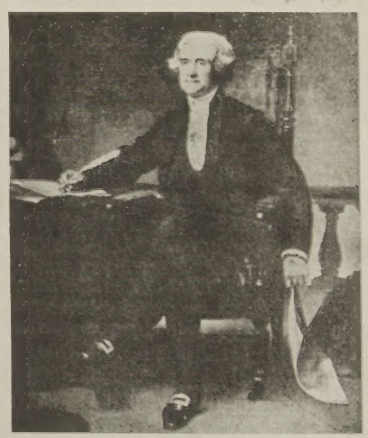
Quote of Note



The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods or no god. It neither picks my pocket, nor breaks my leg.

~Thomas Jefferson

Citizens Project

Prayer

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House's prayers have a decidedly Christian fundamentalist tilt. "There are a lot of us who do not pray in Jesus' name," he wrote. "That's not to take away from anybody who does, but ... that cuts us out of the loop and that very much says we are not expected to participate."

A leader of the Jewish Defense League in Burbank, CA, filed suit in 1999 over the City Council's practice of using invocations that regularly ended with the phrase "... in the name of Jesus Christ. Amen." A state judge enjoined the City Council from "knowingly and intentionally allowing sectarian prayer" at its meetings.

In the spring of 2003, the Utah Supreme Court ruled that the Murray, UT, city council violated the state's constitution when it prevented an atheist's invocation before its meetings. The Utah Supreme Court said the city council erred in ruling the proposed prayer was not legitimate and that it was rejected solely because of its unpopular content.

In late November, the Pompano Beach, FL, city council decided to allow sectarian prayer to open its meetings, instead of religion-neutral invocations. The city clerk had earlier asked religious leaders to ensure their invocations are applicable to all faiths and that no specific religion be promoted. But a lobbying campaign by evangelical Christians led the city council to ignore that directive. As one resident opposed to sectarian prayers put it, "Since when did Christianity become the designated religion of Pompano Beach? I resent being blessed in the name of Jesus Christ, as I'm sure most people would resent being blessed by Allah ... or Buddha."

Contrary to what advocates for public prayer contend, it is not anti-religion to insist on practices that treat all religions equally.

Madison's prediction was on the mark. Public prayer inexorably conforms to the religion of the majority.

As Justice Brennan had said in his *Marsh* case dissent, prayer is "serious business," and courts have found that protecting religious freedom in the wake of public prayer is equally serious business. One upshot of the continuing struggle is that for prayer to be found constitutionally acceptable, it must be essentially secular and incidental. (This same rationale has permitted references such as "In God We Trust" on coins and currency to remain legally acceptable.) References that are obviously sectarian clearly risk violating the religious freedom of those who are not of that particular faith.

Contrary to what advocates for public prayer contend, it is not anti-religion to insist on practices that treat all religions equally. In fact, it is the only way to safeguard religious freedom. How to ensure that equality is the ongoing challenge. One approach the courts have consistently permitted is to keep public prayer free of sectarian terminology. But one can thoughtfully ask: Is that respectful of the prayer itself? Further, as has been pointed out by writers such as Stephen Carter in his book *Culture of Disbelief*, does appealing to a generic "God" to be in service of every secular cause ultimately diminish the weight and force of religious belief?

Given all these considerations, might it be appropriate for the District 11 School Board, in its decision about prayer at its meetings, to reflect Department of Education guidelines for religion in the schools? Those guidelines draw a distinction between the rights of individual students and the duties of teachers and administrators. Students are free to pray voluntarily on school grounds, for example, or read the Bible in study hall. School officials, on the other hand, are required not to endorse any particular religious doctrine or coerce student participation in religious activity. That same kind of distinction is accomplished with a moment of silence, as opposed to a prayer, to open a school board meeting. It respects religious tradition while safeguarding religious freedom in our pluralistic society.

In so doing, it also mirrors the words of Madison from his famed *Memorial and Remonstrance*, in which he wrote that "The religion of every man must be left to the conviction and conscience of every man." A moment of silence achieves that. A prayer puts it at risk.

Be part of the solution.

"I do have a voice and a desire to make changes in my community."

– Citizen's Day at the Legislature participant.

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MISSION:

Citizens Project spotlights issues in the Pikes Peak region and mobilizes people to strengthen the traditional values of our nation: equal rights, individual freedoms, separation of church and state, civic engagement, and respect for diversity.

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